



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 6, 1996

Ms. Y. Qiyamah Taylor
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR96-0897

Dear Ms Taylor:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 33528.

The City of Houston (the "city") received a request for information concerning an accident which allegedly occurred on "Almeda Genoa Between Cullen and Highway 288" on April 21, 1995. Specifically, the requestor seeks the following:

1. All work orders, requisition forms, work request forms, directives, memorandums, and correspondence relating to roadwork consisting of paving and/or repaving work performed by the city of Houston Public Works Department on April 5, 1995, in the 3000 block of Almeda Genoa Road in Houston, Texas (including, but not limited to, any work performed that day on the shoulder of the roadway at that location); and
2. Any and all letters, correspondence, memorandums of telephone conversation or other written documents documenting any complaints regarding motor vehicle accidents occurring in the 3000 block of Almeda Genoa Road in Houston, Texas, for the past 4 years.

You contend that the city has a reasonable expectation of being sued and, therefore, you seek to withhold the requested information pursuant to section 552.103(a) of the Government Code.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Under Open Records Decision No. 638 (1996), a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter

from an allegedly injured party or his attorney and (2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance.

You have submitted to this office a letter from an attorney representing the parties. Because your request for a decision from this office was made prior to the issuance of Open Records Decision No. 638 (1996), this office will assume that you are representing that the notice letter you received satisfies the requirements of the TTCA, or applicable municipal statute or ordinance. We have reviewed the submitted documents, and we agree that they are related to anticipated litigation. Therefore, the city has met its burden of showing that litigation is reasonably anticipated and the documents at issue may be withheld pursuant to section 552.103(a).

If, however, this assumption is incorrect and you are not representing that the notice letter complies with the TTCA, then you have not met your burden of showing that litigation is reasonably anticipated for purposes of section 552.103(a). *See* Open Records Decision No. 638 (1996). We note that if in the future you assert that section 552.103(a) is applicable on the basis of a notice of claim letter, you should affirmatively represent to this office that the letter complies with the requirements of the TTCA, or applicable municipal statute or ordinance.

We note that the applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the information at this time. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 33528

Enclosures: Open Records Decision No 638 (1996)
Submitted documents

cc: Mr. R. Stephen Ferrell
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909 Fannin Street
Houston, Texas 77010-1063
(w/o enclosures; w/Open Records Decision No. 638 (1996))